



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY  
DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Frederick W. Schindler /s/ Kristen Bailey (for)  
Director, Collection Policy

SUBJECT: Use of Transaction Code 971 Action Codes 364/365/366 to  
Identify the Liable Taxpayer in the Limited Liability Company  
Context

The purpose of this memorandum is to describe procedures for input of Transaction Code (TC) 971 Action Codes (AC) 364/365/366 to specific modules on the Integrated Data Retrieval System (IDRS). These action codes will identify the taxpayer liable for payment of employment taxes assessed in the name and Employer Identification Number (EIN) of a Limited Liability Company (LLC). Please ensure that this information is distributed to all affected employees within your organization.

A LLC may be a single member entity (*i.e.*, the entity is owned by one person), or a multi-member entity (*i.e.*, the entity has two or more owners). In the single member LLC context, the determination of who is responsible for any unpaid employment tax liability depends on whether an election was made and the tax period at issue. In general, a single member LLC is classified as a disregarded entity and as a result, its activities are treated in the same manner as a sole proprietorship, branch, or division of its sole owner. See Treas. Reg. § 301.7701-2(a).

For wages paid prior to January 1, 2009, a single member LLC was permitted to satisfy its employment tax obligations with respect to employees performing services for the entity in one of two ways: (1) calculation, filing and payment of all employment taxes under the owner's name and EIN, or (2) separate calculation, filing, and payment of all employment taxes under the LLC's name and EIN (Notice 99-6, 1999-3 I.R.B.). Even in the latter situation, however, the owner of the LLC was treated as the employer for purposes of employment tax liability. Employment tax assessments were made in the name and EIN of the single member LLC, without regard to whether the LLC being assessed was a disregarded entity. Consequently, an LLC that is a disregarded entity was often assessed for the employment tax liabilities that were the ultimate responsibility of the company's owner.

For wages paid on or after January 1, 2009, a single member LLC no longer has the two options set forth in Notice 99-6 for satisfying employment tax obligations. A single member LLC will no longer be treated as a disregarded entity, but is instead regarded for employment tax purposes and liable for employment taxes on wages paid to employees of the LLC. See Treas. Reg. § 301.7701-2(c)(2)(iv).

There is no systemic method to determine the liable taxpayer for employment taxes assessed in the name and EIN of an LLC for tax periods ended prior to January 1, 2009. Service employees must identify the liable taxpayer by determining the classification of the entity for federal tax purposes. IRM 5.1.21, *Collecting from Limited Liability Companies*, describes situations where the taxpayer named in the assessment of employment taxes on wages paid prior to January 1, 2009, is not the taxpayer liable for payment of these liabilities, and provides guidance for determining the liable taxpayer.

As a result of Regulations changes, the LLC itself will be the liable taxpayer for employment tax periods beginning on or after January 1, 2009, regardless of the LLC's classification for federal income tax purposes. Therefore, it will be common to have assessments in the name and EIN of the LLC, where the *owner* of the LLC is the liable taxpayer for employment tax periods ending before January 1, 2009, and the *LLC* is the liable taxpayer for tax periods beginning on or after January 1, 2009.

There may be situations prior to January 1, 2009, where the liable taxpayer changes for assessments made in the name and EIN of an LLC. See IRM 5.1.21.3.7.1, *Examples of Classification Changes by Ownership or Election*, for examples.

It is important that the liable taxpayer be identified on IDRS for each tax period. Once the identity of the liable taxpayer is determined, the revenue officer, advisor, bankruptcy specialist or other Service employee who makes the determination should send a Form 4844, by secure email, to Centralized Case Processing (CCP) to request input of the appropriate TC 971 Action Code for each module, as follows:

TC	AC	Explanation
971	364	LLC is the liable taxpayer for this tax period.
971	365	Single member/owner is the liable taxpayer for this tax period.
971	366	Liable taxpayer changed during this tax period.

If TC 971 AC 364/365/366 was requested in error, request TC 972 with the original action code to reverse it. Then request another TC 971 with the correct action code.

Future programming enhancements to IDRS and the Integrated Collection System (ICS) will allow requests for input of TC 971 Action Codes to include the cross-reference EIN of the liable taxpayer and an effective date. These action codes will be utilized to streamline requests for levies, liens and other administrative collection actions, as well as reduce the need for manual processing of cases where there are separate liable taxpayers for different tax periods assessed under the same EIN.

The procedures in this memo will be incorporated into the next revision of IRM 5.1.21, *Collecting from Limited Liability Companies* as well as other appropriate manual sections, including IRM 5.14, *Installment Agreements*, and IRM 5.16, *Currently Not Collectible*.

If you have any questions, please feel free to contact me, or a member of your staff may contact Pat Hannifin, Program Analyst.